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September 25, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Via hand delivery

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

Re: CC Docket Nos. 01-338

Dear Ms. Dortch:

On September 24, 2002, Charles Hoffman, Chief Executive Officer, Anjali Joshi, Executive Vice President, Praveen Goyal, and Jason Oxman, all of Covad Communications, met with Bill Maher, Jeff Carlisle, Tom Navin, and Scott Bergman of the Wireline Competition Bureau to discuss the Triennial Review proceeding. Covad's points are summarized in the attached presentation.

Respectfully submitted,

Florence Grasso

Cc: Bill Maher  
Jeff Carlisle  
Tom Navin  
Scott Bergman

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**Covad Communications**  
**Triennial Review *ex parte***

FCC Wireline  
Competition Bureau  
September 24, 2002

## Covad at a Glance

Lines in Service	>350,000	Largest DSL provider to US Businesses
Split Business / Residential	50% / 50%	
Businesses & Homes Passed	40 million	

Financially healthy	Annual Revenue Run Rate	>\$400 mill.
	Cash on Hand	\$245 mill.

Daily Install Rate	~900 lines	Industry leading installation performance
Average Professional Install Time	20 days	
Average Self Install Time	10 days	



## Covad is fulfilling the broadband promise

- Covad's nationwide network reaches 45% of the nation's homes and businesses -- the largest national broadband network. Booking over a thousand new orders *each day*.
- True wholesaler to the nation's largest residential ISPs
  - Wholesale ISPs: AOL, Earthlink, AT&T, dozens of others.
- True wholesaler to small business carriers. The only nationwide business-class DSL provider -- no BOC offers it.
  - Wholesale carrier customers: Sprint, SBC, AT&T, WorldCom.
- Current customer base is 50% residential (100% new customers are linesharing) and 50% small business.
- The only force leading broadband prices *down* -- Covad leads with residential broadband at \$21.95.
  - SBC has already followed by lowering prices - although not as much. Others will too only if competition remains in the residential market.

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# Covad fulfills the promise of the 1996 Act

- Facilities based network deployment (DSLAMs, routers, ATM equipment) in nearly 2,000 central offices -- 45% of the country.
- Covad utilizes *only* the core of the ILEC bottleneck -- the ILEC transmission grid (loops and interoffice transport) -- exactly what Congress and the Commission intended.
- If the Commission allows the remonopolization of ILEC transmission facilities, it will lose the only remaining nationwide broadband provider.
  - Covad is the *only* nationwide option for residential ISPs (ILECs don't want to serve independent ISPs -- see BOC Broadband NPRM comments).
  - Covad is the *only* nationwide option for small business DSL (ILECs don't offer SDSL business class DSL services).

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## Overview of Covad's *Triennial Review* advocacy

- No evidence on the record of changes in circumstances since the *UNE Remand Order* that support eliminating transmission UNEs.
- **Loops** are still bottlenecks, cannot be economically or technically duplicated, regardless of what service is offered over the loops, or what material the loops are made of. Nothing on the record supports any changes to the Commission's current loop rules.
- **Lineshared loops** are still the only way to serve the consumer DSL market. Nothing on the record challenges the economic or technical impossibility of serving consumers over stand-alone loops. No legal argument on the record that CLECs are not impaired without lineshared loops.
- **Interoffice transport** is not available from alternate providers. Collocated fiber providers link COs with downtown office buildings, not other COs. No evidence on the record that COs are linked to one another by CLECs.
- **OSS** is vital for pre-order loop makeup info, ordering, provisioning, billing, repair. Nothing on the record supports eliminating OSS.

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# What evidence is on the record of change since the *UNE Remand Order*?

- **Loops** are still bottlenecks, cannot be economically or technically duplicated, regardless of what service is offered over the loops, or what material the loops are made of. Nothing on the record supports any changes to the Commission's current loop rules.
- **Lineshared loops** are still the only way to serve the residential/SOHO DSL market. Nothing on the record challenges the economic or technical impossibility of serving residential/SOHO customers over stand-alone loops. No evidence on the record that CLECs are not impaired without lineshared loops.
- **Interoffice transport** is not available from alternate providers. Collocated fiber providers link COs with downtown office buildings, not other COs. Not a single piece of evidence on the record that COs are linked to one another by CLECs.
- **OSS** is vital for pre-order loop makeup info, ordering, provisioning, billing, repair. Nothing on the record supports eliminating OSS.

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# Loop Unbundling

# ILEC loop plant is ubiquitous and cannot be duplicated

- According to the Commission's ARMIS reports:
  - ILECs have deployed nearly six million kilometers of local loop copper cable.
  - ILECs have deployed more than 671,000 kilometers of local loop fiber optic cable.
  - ILECs own more than 19 million telephone poles, over which is strung two million kilometers of aerial cabling.
  - ILECs own nearly two million kilometers worth of underground cabling in trenches and conduit.
  - The total reported book value of ILEC telecommunications cable and wire facilities alone (not including other ILEC assets) in 2000 was over \$349 billion.

Source: ARMIS statistics from Statistics of Communications Common Carriers, Operating Statistics of Reporting Incumbent Local Exchange Carriers as of December 31, 2000, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Table 2.6, available at [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/SOCC/00socc.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/00socc.pdf).

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## A loop is a loop is a loop

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- Regardless of the material it is made of, regardless of the customer served over it, and regardless of the speed of service offered over it, a loop is a bottleneck facility.
- If the Commission attempts to engineer limitations on what can be offered by CLECs over a bottleneck loop facility, it will be engineering a halt to innovation.
- The Commission's loop unbundling rules must continue to require unbundling of loops capable of offering any technically feasible telecommunications service, including all flavors of DSL and T-1.
- Any restriction on customer segment or speed of service over a loop flies in the face of the intent of the Act and the Commission's stated goal of encouraging the widest possible deployment of broadband services.
- No argument can be made that mandating the availability of loops harms innovation.

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## **Loop unbundling rules must be clear**

- ILECs must be obligated to provide loops capable of supporting any technology presumed acceptable for deployment pursuant to the Commission's existing rules.
  - DSL-capable loops of all kinds.
  - DS-1 capable loops.
  - Lineshared loops.
- ILECs must be required to condition and de-condition loops to the extent technically feasible.
- Loop unbundling without specific provisioning obligation is meaningless. ILECs must be required to provide loops in 3 business days (standalone loops) and 1 business day (lineshared loops), pursuant to the Commission's UNE Performance Metrics NPRM.

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# **Loop Unbundling: Lineshared Loops**

# Linesharing for residential/SOHO market

- ADSL designed to operate on same loop as voice, preserving the baseband voice and utilizing unused upper frequencies.
- Consumer selling point is talking and surfing the net at the same time over their existing phone line. All BOCs market their retail services in this manner.
- Each truck roll = \$180. Standalone loop requires Covad *and* ILEC truck roll. Impossible to serve residential market.
- Self-install rate at 98% for consumers allows Covad to mail Jumpstart kit to consumers and turn up service within 7 days -  
- self-install not possible with stand-alone loops.
- Interval for linesharing UNEs (because the loop is already installed and already works) ~ 2-3 days
- Interval for standalone loop ~ 7-10 days.
  - Consumers won't wait for standalone loop from Covad when if they can get lineshared loop from ILEC.

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# BOCs all market their retail DSL services based on the advantages of linesharing.

- **Verizon**: "Now you can log on to the Internet and talk on the phone at the same time."  
[http://www22.verizon.com/foryourhome/dsl/whatisdsl/NLF\\_WhatIsDSL.asp](http://www22.verizon.com/foryourhome/dsl/whatisdsl/NLF_WhatIsDSL.asp).
- **SBC**: "Use your existing telephone line. Make phone calls, send and receive data on the same line."  
<http://www.pacbell.com/affinity/san/1,,24,00.html?SRC=http%3A%2F%2Fsw51%2Esb%2Ecom%2Fctrk%2Fp%2Egif%3F&EI=20020716210134C&E=L&CI=&UI=&EL=&TI=&RI=&RD=>.
- **Qwest**: "Talk on the phone and surf the Internet at the same time. No need to purchase an additional telephone line."  
<http://www.qwest.com/residential/products/dsl/index.html>.
- **BellSouth**: "The service lets you send data and voice over the same line so you can talk or fax while you surf."  
[http://www.fastaccess.com/consumer/blsc\\_whatisdsl.jsp](http://www.fastaccess.com/consumer/blsc_whatisdsl.jsp).



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## **Covad cannot be competitive with ILECs without lineshared loops.**

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- Consumers will not suffer through two installs (loop plus Covad install) and will instead chose BOC self-install via linesharing.
- Install interval of less than 10 days for linesharing versus 20 days for standalone loop.
- Customer cannot talk and surf on the same line -- new facility (if available) must be installed.
- Covad could not maintain technician force to install huge volume of consumer lines, while BOCs need no technicians because of self-install.
- Consumer price point provides insufficient revenue to support purchase of standalone loop.

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# Covad would lose money on every single consumer line deployed over stand-alone loops.

			NPV	NPV
			Line Shared	2nd Line
Wholesale ADSL	Access only		\$ 306	\$ (278)
Wholesale ADSL	Lite + IP		\$ 140	\$ (457)
Wholesale ADSL	Self install		\$ 442	\$ (176)
Retail	ADSL	Surfer	\$ 403	\$ (197)
Retail	ADSL	Link	\$ 257	\$ (343)
Retail	ADSL	Plus	\$ 576	\$ (24)

- Extra costs include: Truck rolls (2 -- ILEC plus Covad); no self-install kit; no use of existing in-service loop; longer interval for loop provisioning



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**ILECs have introduced no evidence on the record of changes in circumstances since the adoption of linesharing in 1999 that could support elimination of the linesharing UNE.**

- In the absence of that record support, the Commission cannot eliminate linesharing.
- "It is axiomatic that an agency choosing to alter its regulatory course "must supply a reasoned analysis indicating that its prior policies and standards are being deliberately changed, not casually ignored." Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C.Cir.1970), cert. denied, 403 U.S. 923, 91 S.Ct. 2233, 29 L.Ed.2d 701 (1971); accord Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)."
- "Revocation constitutes a reversal of the agency's former views as to the proper course.... In the abstract, there is no more reason to presume that changing circumstances require the rescission of prior action, instead of a revision in or even the extension of current regulation. If Congress established a presumption from which judicial review should start, that presumption ... is not against ... regulation, but against changes in current policy that are not justified by the rulemaking record." Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 41, 42, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)

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# CLECs are still impaired without access to lineshared loops

- The Commission's conclusions underlying the adoption of linesharing are not challenged on the record in the Triennial Review.
- "Carriers seeking to deploy voice-compatible xDSL-based services cannot self-provision loops." Linesharing Order at para. 37.
  - CLECs still cannot duplicate the ILECs' nationwide loop plant.
- "Requiring that competitors provide both voice and xDSL services, or none at all, effectively binds together two distinct services that are otherwise technologically distinct. Such bundling . . . will drive investment away from the provision of advanced services." Linesharing Order at para. 56.
  - Particularly in this capital environment, DSL providers cannot afford the hundreds of millions of dollars needed to deploy nationwide voice architectures.
- No BOC submitted a supportable claim on the record to be suffering economic harm or deterred from innovation because of unbundling of lineshared loops.



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## **Verizon mounts the only serious challenge to linesharing unbundling, and its arguments are without merit.**

1. Verizon claims that linesharing is not a "network element" because the high frequency portion of the loop is not a "dedicated facility." Verizon Comments at 82.
  - But network element definition is not limited to "dedicated" facility" -- rather, definition includes "facility or equipment" as well as "features, functions, and capabilities that are provided by means of such facility or equipment." Thus, the frequencies of the loop are features, functions, and capabilities of the loop, and thus are included within the definition of a network element.
2. CLECs are not impaired without access to linesharing, because cable modems, satellite, and wireless "provide the same functionality to consumers" as DSL and thus "constitute precisely the type of facilities available outside of the incumbent's network" that bars the Commission from unbundling lineshared loops. Verizon Comments at 83.
  - As described earlier, Covad DSL is a superior service to alternative broadband retail offerings, and is superior to BOC retail DSL. Consumers benefit from the technical and price superiority of Covad's DSL offerings. In addition, cable modem and other alternative facilities are not available to Covad, and thus Covad is still "impaired" within the meaning of the statute without access to lineshared loops.



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## Verizon linesharing arguments, continued

3. ILECs are "new entrants and relatively minor players in this market" and thus the Commission "cannot compel access" to ILEC loops for broadband CLECs. Verizon Comments at 84.
  - The ILECs are not "new entrants" as to local loop plant, and are certainly not "minor players" as to their control of those bottleneck facilities. The issue of the ILECs' share of the customer base of retail broadband services is not relevant to the question of whether CLECs are impaired without access to loops in their ability to provide telecommunications services. ILECs control bottleneck loop facilities, and absent access to those facilities, CLECs are impaired.
  - Mere existence of cable modem services does not change bottleneck nature of loops -- CLECs are still impaired without access to loops.
  - Loops are not "new wires" and are not entitled to "new rules."
4. Imposing an unbundling obligation "would jeopardize the continued viability of [broadband] competition." Verizon Comments at 84.
  - To the contrary, the linesharing obligation has led to an explosion in broadband competition. Verizon introduces no evidence that its obligation to unbundle loops deters competition.

## Verizon linesharing arguments, continued.

5. Eliminating linesharing simply puts the ILEC and the CLEC in "precisely the same position" because both carriers must provide voice and data over the same line in order to serve customers. Verizon Comments at 85.
  - Covad is not in the same position as Verizon as to loops -- Verizon owns the loop plant by virtue of a government grant of monopoly and funded its network construction through a captive ratepayer base. Verizon still has 92% of the voice market, and can fund its DSL deployment because its voice customers pay for the full loop. Covad would have to win the voice customer from Verizon before Covad could offer DSL, thus forcing Covad to enter a market in which it has no expertise, and no reasonable prospect of winning sufficient customers to succeed.
6. Linesharing is "inconsistent with the Act's goal of promoting facilities-based competition" because linesharing "unquestionably discourages CLECs from investing both in their own advanced services facilities and in facilities used to provide competitive telephony services." Verizon Comments at 86.
  - Covad and other DSL providers would not, and could not, invest in their own loop plant to serve residential DSL customers, and thus the unbundling of the loop plant in no way deters facilities investment. With the exception of the UNE transmission facilities, Covad's network is already facilities based, and thus Covad has invested in the network facilities it needs except ILEC transmission facilities, which cannot be duplicated.



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# Verizon linesharing arguments, continued

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7. Linesharing "degrades the ultimate performance and reach of the physical links." Verizon Comments at 86.
  - Exactly the opposite is true - linesharing enhances the performance of existing loops by utilizing the upper frequencies. ADSL was designed to operate in a linesharing environment, and other than this conclusory statement, Verizon offers no specific technical evidence of degradation, as it cannot.
8. Linesharing "indisputably reduces the ILECs' incentives to upgrade their networks." Verizon Comments at 86.
  - Verizon introduces no evidence in support of its claim that the loop unbundling obligation deters Verizon from upgrading its loop plant. Verizon erroneously applies its argument about facilities that may be available on the open market (switches, e.g.) to loops.

# CLECs cannot provide residential/SOHO DSL without lineshared loops.

- Nothing on the record has changed since the adoption of linesharing in 1999, except the explosion in the availability of competitive DSL services at low prices, due to linesharing.
  - The record before the Commission in the Triennial Review does not justify reversal of linesharing rules -- no evidence that CLECs are no longer impaired without access to linesharing.
  - Even the Tauzin/Dingell bill expressly preserves linesharing.
- No BOC claims to be suffering economic harm or deterred from innovation because of unbundling of lineshared loops. If the BOC wins the customer, they get to use the transmission facility themselves.
- Sole BOC argument: cable is the “real monopoly” in broadband.
  - Mere existence of retail cable modem service does not change bottleneck nature of loops. Fact that cable companies are more skilled in selling retail service than BOCs is irrelevant to unbundling inquiry.
  - CLECs cannot access alternatives to loops, including cable plant.
  - Loops are not “new investment” or “new wires.”



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**Loop Unbundling:**

**Remote Terminal-fed loops**

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# Remote Terminal-fed loops

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## Loops are bottleneck facilities regardless of the material they are made of

- The Commission has properly concluded that the loop is a bottleneck facility -- impossible to duplicate -- whether it is made of copper, a mix of copper and fiber, or all fiber.
- Fiber-fed loops are the product of the most efficient voice network plant deployment -- ILECs use RT-delivered loops even in the absence of DSL.
- ILEC “upgrades” of RTs use existing copper, fiber, remote terminals, rights of way, etc. The only new addition to the loop is a new RT line card.
- Because RT-delivered loops must be unbundled, the only issue to resolve is how to price the “new” component of the loop -- the RT line card.
- Verizon Barr letter provides the roadmap.

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# Verizon's July 16, 2002 Barr letter provides RT loop unbundling roadmap

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- The question is not whether access should be granted (it should), but how to price the RT line cards.
- Verizon provides the details on how this can be handled within the existing TELRIC methodology:
  - “First the Commission should further clarify the appropriate calculation of the cost of capital.” Barr Letter at 2.
  - “Second, the Commission should further clarify the appropriate treatment of depreciation.” Barr Letter at 2.
- Covad agrees with Verizon that a broadband UNE is appropriate means of providing access to RT-delivered DSL-capable loops.
  - Question of how to price those loops is the proper purview of the state commissions, with guidance from the FCC on how to apply TELRIC.

## **BOC arguments for elimination of RT collo and sub-loop unbundling can only be accepted with the adoption of the Broadband UNE**

- BOCs are asking the Commission to eliminate RT collocation and sub-loop UNEs in order to insulate their “new investment” against unbundling.
  - The Commission has concluded since 1996 that all loops, including loops delivered through RTs, are bottleneck facilities that cannot be duplicated by competitors. Nothing on the record in this proceeding challenges that finding.
- The question is not whether RT-delivered loops should be unbundled -- it is the proper TELRIC price for attached electronics.
- Tariffed offerings are no substitutes for UNEs.

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**Interoffice Transport**

## Overview -- Interoffice Transport

- True interoffice transport is part of the bottleneck transmission grid, just like loops.

- The Commission's findings as to interoffice transport in the *UNE Remand Order* are still valid.

- ILECs own "Fact Report" shows that 86% of ILEC COs have no competitive fiber provider collocated.

- ILECs provide not a *single example* of a true interoffice transport route that is actually served by CLEC transport.

- The only data provided by ILECs is whether there is a collocated fiber CLEC -- no indication as to where the fiber goes. Most likely, to downtown office buildings, not to other central offices.

- Covad's network of collocated COs requires interoffice transport between all COs. Such transport is not available from CLECs.

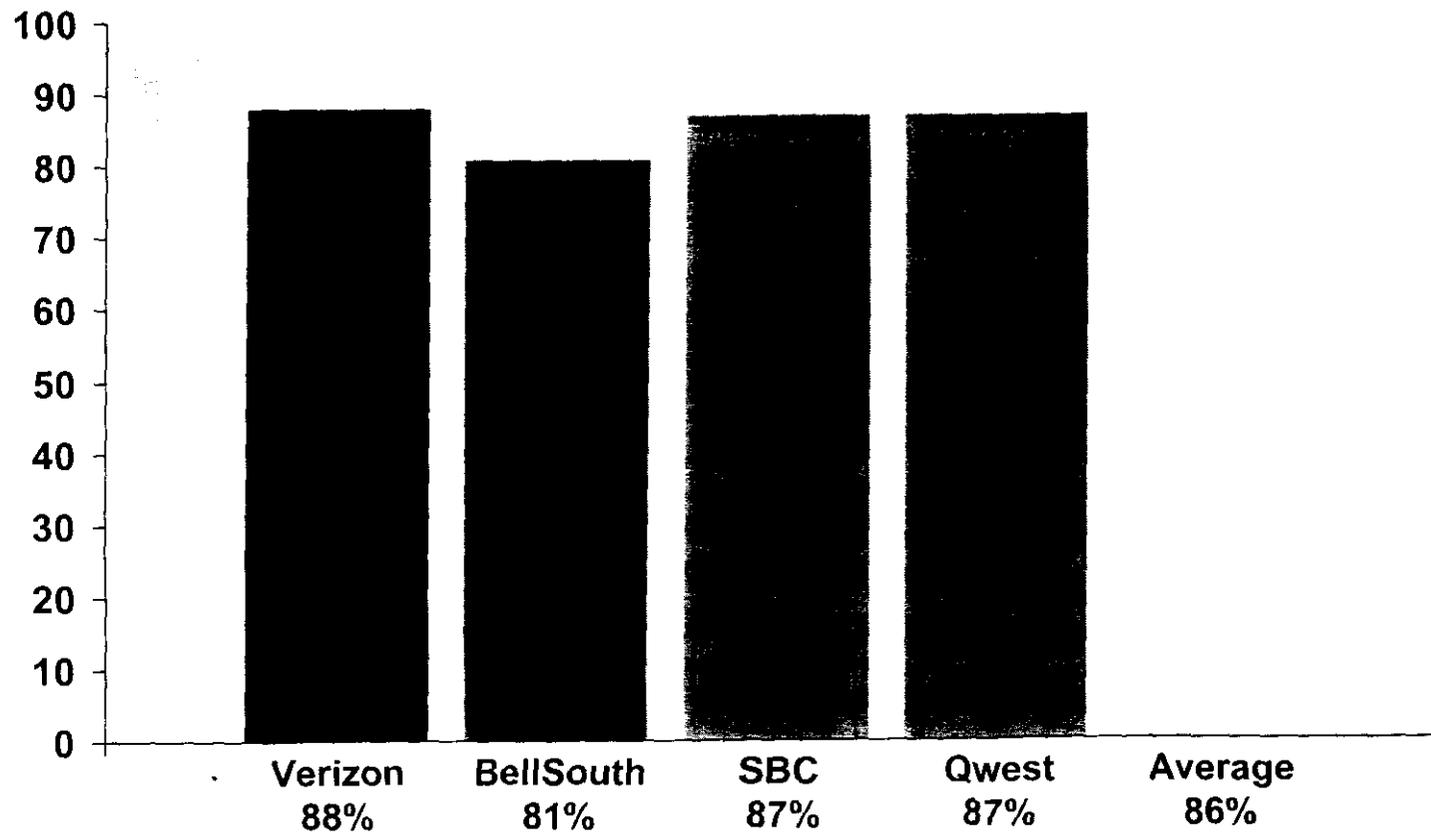
- ILECs are confusing the issue between fiber loops and interoffice transport in order to sell more special access services.

- Determination of competitive interoffice transport is fact-specific and route-specific inquiry.

- Where does the fiber go? Is it available to third parties?

# Percentage of ILEC COs without a single competitive fiber provider collocated

Source: UNE "Fact" Report at III-2.



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